

1 Bench Opinion by Judge Mary Ann Cohen

2 February 7, 2011

3 Susan Lee v. Commissioner Docket No. 16260-10L

4 THE COURT: The Court has decided to render
5 an oral opinion pursuant to rule 152, Tax Court Rules
6 of Practice and Procedure. The material facts have
7 been deemed stipulated pursuant to Rule 91(f), as
8 stated in the Court's order of January 18, 2011.

9 This case was commenced in response to a
10 notice of determination concerning collection action,
11 which determined that collection by levy should
12 proceed with reference to a frivolous return penalty
13 of \$5,000 assessed pursuant to Internal Revenue Code
14 Section 6702(a).

15 The penalty was assessed as a result of
16 Petitioner's submission of a Form 1040X, amended
17 return, for 2004, which is Exhibit 3-J, in 2007. On
18 that Form 1040X, she indicated that she had previously
19 reported wage income, taxable income, and tax
20 liability, but she claimed that she had zero income
21 and zero tax liability.

22 Attached to the Form 1040X were copies of
23 altered Forms 1099 on which Petitioner represented,
24 under penalty of perjury, her position that the form
25 "erroneously alleges a payment to the party identified

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1 above as 'Recipient' of 'gains, profit or income' made
2 in the course of a 'trade or business'."

3 The Internal Revenue Service determined, and
4 we agree, that the Form 1040X with attachments was
5 frivolous on its face and reflects a desire to delay
6 or impede the administration of federal tax laws.

7 To the extent, therefore, that Petitioner
8 purports to contest the underlying liability in this
9 proceeding, she has failed to show any error in that
10 assessment. The document that she filed, standing
11 alone, satisfies Respondent's burden of proof under
12 Section 6703(a).

13 During the administrative proceedings, and
14 in this Court, Petitioner has maintained frivolous and
15 groundless positions. In a letter that is Exhibit
16 4-J, she asserted that the compensation that she
17 received in 2004 for services performed by her is not
18 taxable. She has suggested that argument in her
19 petition and in requests for admissions and
20 interrogatories served by her.

21 Although she partially abandoned that
22 argument, along with numerous other frivolous
23 contentions, in her pretrial memorandum filed
24 February 3, she still maintains as Item 13, page 3 of
25 her pretrial memorandum that, "I deny having duty and

1 authority to perform any act as an officer, employer,
2 or partner of any entity required to file any return
3 or perform any act with respect to Internal Revenue
4 law."

5 Such arguments have led to criminal
6 convictions and civil fraud penalties, as well as
7 Section 6702 and 6673 penalties, as involved in this
8 case. The underlying convoluted statutory
9 interpretations behind those arguments have been
10 characterized as inane, preposterous, utterly without
11 merit, frivolous non-sequitur, beyond frivolous, and
12 frivolous squared in cases going back 25 years or
13 more.

14 Petitioner is not entitled to simply deny
15 that her arguments are frivolous. She has not offered
16 any non-frivolous explanation for her Form 1040X or
17 her maintenance of this case. Petitioner has filed
18 nonsensical motions challenging jurisdiction and
19 asserting the bar of the statute of limitations.

20 The assessment of penalty on October 12,
21 2009, with respect to the Form 1040X filed on
22 October 23, 2007, was timely, and her attempts to
23 relate back to the due date, the filing date, or the
24 content of the 2004 return is fallacious. She has not
25 raised any credible challenge to the validity of the

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1 assessment or any alternatives to collection.

2 Petitioner was warned by Respondent, and by
3 the Court, of the possibility of a penalty under
4 Section 6673 if she continued to pursue frivolous
5 arguments in this case. That penalty is separate from
6 the Section 6702(a) penalty already imposed, and from
7 one that might have been imposed under 6702(b) by
8 reason of any frivolous submission during the Section
9 6330 hearing.

10 Notwithstanding her self-serving denials,
11 Petitioner's positions in this proceeding are
12 frivolous and groundless, and her multiple dilatory
13 motions justify the conclusion that the proceeding has
14 been instituted or maintained primarily for delay. We
15 have considered Petitioner's other arguments, and they
16 lack merit.

17 We will not further indulge delaying
18 tactics, and decision will be entered sustaining the
19 determination on which this case is based. Our
20 decision will also order that Petitioner shall pay a
21 penalty to the United States under Section 6673 in the
22 amount of \$1,000. And that concludes the Court's
23 opinion.

24 (Whereupon, at 3:15 p.m., the bench opinion
25 in the above-entitled matter was concluded.)